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TO THE INHABITANTS OF BATHURST DISTRICT.

"Nothing extenuate or ought set down in malice."

ON my way from Montreal to Kingston some short time ago, I was under the necessity of passing through the metropolis of the Bathurst District, and having some business of consequence to transact in the place, was detained unexpectedly for several days. During my sojourn the Court of Quarter Sessions was sitting—indeed I happened to be present at its opening, and of listening to as dull, tedious, and incoherent a charge from the Chairman (a legal man too) to the Grand Jury, as could be well conceived.—I was always under the impression until that day, that professional men were selected by the Government to fill the situations of Chairman on account of their professional standing, respectability and legal attainments. The specimen afforded me at Perth has convinced me of my error, and fully satisfied me that the selection in that quarter at least, has been a very unjust one, and made, I fear, not so much with reference to the party's legal standing and professional eminence while at the Bar, as for his political bias and servile adherence in the cause of the Member who unfortunately represents the flourishing County of Lanark. It is easily perceived that several of the individuals holding the prominent and lucrative offices in the District, are indebted to the little modest Gentleman for their elevation—among the number I would mention the Chairman, the Sheriff, and Treasurer.—These individuals all received their appointments during the Bagot reign, and in which it is notorious *modest* Malcolm possessed an unbounded influence and control. It cannot be denied that all these individuals exerted their utmost influence (whether feeble or otherwise) in his behalf. But to return to my subject. The Chairman began with descanting at wearisome length upon Licensed Inns, and the inattention paid by their inmates to the Rules and Regulations framed for their guidance. Now, I ask, what in the name of common sense have Grand Juries to do with Innkeepers and their regulations?

Whether certain applicants are fit subjects to receive Licenses or not, rests with an entirely different tribunal. He strenuously urged upon them the necessity of making Presentments in every case where Innkeepers were found to have been guilty of a breach of their recognizance in order that Indictments might be preferred, and the delinquents brought to Justice. The Chairman in speaking of Recognizances was again not a little astray,

for Innkeepers (as far as my recollection goes) enter into Bonds not Recognizances. Does he not know that Bonds are one thing — Recognizances another. The error in a legal man is quite unpardonable. Again, does the Chairman not know that when Innkeepers violate their Rules and Regulations, the law provides the remedy. Has he never read the 6th Clause of the 34 Geo. 3rd, Chapter 12? If he has not, I would recommend it to his attentive perusal, so that the next time he has occasion to address a Grand Jury, he may steer clear of such gross blunders, and not put even the *Bathurst Courier* (his wretched prop and support) to a blush.

In order to subserve the cause of temperance in which many good and conscientious men are employed and direct most commendably much of their leisure time, I give the following brief extract from the statute. "Any Justice of the Peace in the District where a license is granted, upon complaint that the licensed person hath done any act by which the condition of his Bond is broken, may, by summons under his hand and seal require the person complained of to appear at the next Quarter Sessions to answer the matter of such complaint, and may bind over the person making the complaint in a Recognizance to appear at such Quarter Sessions and give evidence against the party complained of—and the Justices in Quarter Sessions assembled shall have power to direct a Jury of 12 honest and substantial men to be empaneled at such Sessions without fee or reward, to enquire of the misdemeanor charged in such complaint, and if such Jury shall find the person complained of to have broken the condition of his Bond (such act being specified in such complaint or summons) then such person shall be adjudged guilty of a breach of his Bond, and the said offender shall from and after such adjudication be utterly disabled from selling any Wines, Brandy, Rum, Spirituous Liquors or strong Waters for the space of three years; and any license or licenses granted or to be granted to such delinquent during such term shall be utterly null and void."

The course therefore, clearly pointed out by the Act, and the only feasible one is, for complainants or parties dissatisfied with the conduct of Inn keepers to prefer their complaint to a single Justice and not to a Grand Jury, where the matter may be prosecuted to a final and successful issue. It Grand Juries were to make a thousand presentments to be followed up by that number of indictments, what would it avail? Nothing!—No possible good but much mischief would necessarily result from such a course. It must soon weaken, nay destroy, all confidence in the Court, and ultimately hold up the Chairman (its distinguished ornament in the eyes of a few) to public scorn and

derision. But this I regret to say for the honor of the District, was but one of the many palpable blunders perpetrated during the Quarter Sessions, which from the Chairman's dilatoriness and inaptitude for business, was spun out to the unprecedented length of six days.

The Queen against Campbell, tried and convicted of an assault at the July Sessions, in which the sentence of the Court was respited to the November Sessions, in order that the opinion of the Court of Queen's Bench or one of its Judges, as to the validity of an objection raised by a Mr. Deacon, engaged on the part of the defence. *obj. b. obtained*

In order to understand the merits of the objections referred to, it will be necessary to advert to Clause 41, of the 4th and 5th Victoria, Chap. 37, which provides that the prosecution for any offence, punishable on summary conviction, by virtue of that Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise. Mr. Deacon at the trial, as was represented to me, contended that "the assault had been committed for more than three months previous to the indictment being preferred" that the prosecution was not in time, and the indictment therefore not sustainable. The Council on the other side, maintained that the clause in question had no reference to prosecutions by indictment, but was restricted in its operations to summary proceedings before a Justice of the Peace; and of that opinion the Court were unanimous, with the exception of the Chairman, who coincided in opinion with Mr. Deacon.

We understand the opinion of the Judge of Assize was taken on the subject, and who absolutely ridiculed the notions entertained by both the Chairman and Mr. Deacon.

We were present when the matter was brought up on the first day of the Sessions, and which led to some unpleasant remarks between Mr. Frazer and the Chairman—the former gentleman reporting that the Chairman had misled the Bench, and that a School boy might have known that there was nothing in the objection raised—and furthermore that the Chairman was unfit to be the organ of the Bench of Magistrates.

For this very serious offence towards so distinguished an expounder of the law as the Chairman, we understand the latter has forwarded a complaint to the Government, of which it is very probable the same notice will be taken as of other complaints of a similar nature formerly transmitted to the same quarter.

We were also present when a motion was made that the sentence of the Court should be pronounced on the defendant, Campbell; as the Magistrates who were present at the trial

were then in Court, and who, from their knowledge of what transpired at the trial, were surely the only persons who could award a suitable punishment. The Chairman remarked that he had not his notes of the trial in Court, and wished the matter postponed until the afternoon, which was immediately acquiesced in.

We understand, that late on the evening of the same day, when not a single Magistrate who presided at the trial, with the exception of the Chairman himself, (and in the absence of the Council for the prosecution,) the defendant was sentenced to pay a fine of 20 shillings and costs.

By this manœuvre the defendant received, in all probability, a much more lenient punishment than would otherwise have been awarded; and the costs of the witnesses on behalf of the prosecution were wholly lost.

Not being able to bring my business at Perth, to a close until Monday morning, and finding upon enquiry, that there would be no stage to Brockville until the following morning, and understanding also, that the Quarter Sessions were still sitting, I once more repaired to the Court House, and on entering that sanctum sanctorum, found the Clerk of the Peace (a very gentlemanly person) engaged in empannelling a Jury, in the case of the Queen *vs.* Dowdell and others, indicted for a riot and assault committed upon a mechanic of the name of Drew. I listened attentively to the whole investigation, but there could be nothing elicited in evidence (notwithstanding the very culpable perseverance of the Chairman) to fasten the charge upon the three young men under trial, and whose personal appearance and demeanor in Court, spoke volumes in their favor, and testified, to my satisfaction at least, that they were innocent of the charge preferred against them. A thought struck me during the progress of this trial, how so groundless a prosecution could have originated. Surely, said I to myself, the Grand Jury could never dream upon the evidence brought before the Petty Jury, of calmly and deliberately putting any person upon trial. Surely, said I, if they originated the prosecution by presentment, they must be grossly ignorant of the duties enjoined upon them by their oaths; and if the latter, who, in God's name, is to blame? Upon whom must devolve the responsibility, and not a light one too? Why, unquestionably the Chairman! But imagine my surprise upon finding on enquiry, that the individuals then under trial, had been originally apprehended under a warrant issued by a magistrate, and that magistrate too, no less a person than the very Chairman himself. What, said I, are the rights and liberty of the subject to be infringed in this way? Are indi.

viduals to be arrested without rhyme or reason ? torn from their legitimate pursuits, paraded through the public streets by the newly baptised Sheriff and his myrmidons—subjected to the hazard and expense of a public trial—and what is worse, the costs of an unjustifiable prosecution thrown upon the District Treasury—and all this for what object ? Why, simply to gratify the whims and caprices of the very sapient Chairman, and fill the pockets of his political confederate and bosom friend, Mr. Sheriff Switchem. Had I experienced such treatment at the hands of a legal functionary, I can only say, that I would never rest contented until reparation (and most ample reparation too) was made. Have these young men neither parents or friends to espouse their cause ? If they have, they owe it as a solemn duty, both to themselves and society, to have the matter fully investigated. Let them demand it, it is their right. Let them obtain from the Chairman (it cannot be legally withheld) the information upon which the warrant was granted. One thing is quite apparent ; either Drew the complainant, swore in private to what he dare not testify to in public, or the Chairman, in issuing the warrant knowingly outstepped, yes, intentionally transgressed the bounds of his duty. Who, I ask, that witnessed this investigation throughout, that did not observe on the part of the Chairman, a reprehensible feeling towards these defendants, an eager and insatiable thirst for their conviction ? Did any person ever see even the conductor of a Crown prosecution proceed to such extremities to gain a conviction ? I think not. So far from acting as Council for the defendants, (a beautiful feature in our English Courts) the Chairman altogether lost sight of the principle, and so far from carrying it out, (for two of the individuals indicted, had not the advantage of Council) became the strenuous, the persevering advocate of the prosecution. Perhaps he ran away with the idea, that having taken an illegal step in issuing the warrant, he must, at all hazards, follow it up by another illegal step, and endeavour to procure, right or wrong, a conviction. In this way, and in this way only can his conduct be reconciled.

Who again, that witnessed this extraordinary trial throughout, that did not see evinced on the part of the Chairman, an earnest desire to extort, even from the witnesses, a confession of guilt. It is, I believe, a settled principle in the Courts, (if I am wrong let me be contradicted) that no person in the witness-box can be forced to criminate himself—and yet there see the worthy Chairman in utter defiance of this principle, with a tone, a spirit, & a countenance peculiarly his own, his grey hairs bristling on end, zealously labouring to betray not a few of the

witnesses into an acknowledgment of their guilt. O! shame, where is thy blush?

Again was witnessed during this extraordinary trial, the novel spectacle of a member of the Court descending from the bench to the witness box, to give evidence. Did it not occur to the *sapient* Chairman, that this was without a precedent? Does he not know that a Court of Quarter Session cannot be organized, that it can neither be opened, continued, or closed without the presence of two magistrates? Did he not know that when his brother magistrate descended from the Bench to become a witness, and he, the Chairman, was left *solus*, that the very vitality of the Court was at an end? And yet, there sat this worthy, arrayed in all his robes of ignorance, taking down the evidence of his brother magistrate, with astonishing coolness and deliberation. I must confess that I could not but smile at the anomaly, and yet, I felt exasperated that such things could exist in a Court of British Judicature.

During this stage of the proceeding I noticed the Rev. Hugh McDonagh, Mr. McMartin and others who were sitting near each other, smiling—first surveying the Bench, then the witness Box, and last a crowded auditory—their countenances clearly indicated their feelings, and too plainly bespoke the Words “what a humiliating picture.”

Numerous subjects of complaints and dissatisfaction with respect to the Courts came to my notice whilst at Perth, which I am compelled unavoidably to defer to a future period, and which to do bare justice to, will necessarily form the subject of three or four additional Communications, and that too of no very moderate length. Things for the last five years in this quarter (I may date from the time that the late Sir Charles Begot became wholly incapacitated to attending to Public Business) have been evidently in a very pitiable condition—calculated much to lower and degrade the District in public estimation—and it is only matter of surprise that the loyal, intelligent, and independent portion of the inhabitants of the District, should have so long tamely and quietly submitted to this melancholy state of things. An enlightened press under judicious management and controul having for its object the dissemination of correct information and upon those principles of Government without which no Country can long prosper, and directed to the reformation of existing abuses would soon achieve the desired object—It is to be sincerely hoped that so important a desideratum to the welfare of the District will not be long wanting.

Really from what I saw, what fell within my own personal observation, and what I gleaned from authentic sources during

offices

my temporary sojourn at Perth, the public ~~affairs~~ with one or two exceptions (I may instance the Clerk of the Peace and Registrar) are conducted in any thing but a creditable manner, and as respects the Chairman of the Quarter Sessions, I cannot in candour, justice, or common honesty, give any other opinion than that expressed so fearlessly by Alexander Frazer, Esq. on the first day of the Sessions viz, that from the paucity of his legal knowledge, his want of urbanity and gentlemanly demeanor, vacillating and erroneous decisions, his persevering and outrageous blunders so far from being a credit and an ornament, is in truth a curse and a disgrace to the judiciary of the District.

OBSERVER.**KINGSTON, 16th Decr., 1846.**